

OCT 27 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY WEAVER BRADLEY,

Defendant - Appellant.

No. 02-10580

D.C. No. CR-01-00265-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted September 8, 2003
San Francisco, California

Before: SCHROEDER, Chief Judge, O'SCANNLAIN, and TASHIMA, Circuit Judges.

Timothy Weaver Bradley appeals his jury trial conviction of being a
felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

924(a)(2). He also appeals the imposition of a two-level sentence enhancement for obstruction of justice.

Bradley contends that the district court erred in substituting an alternate juror, after deliberations began, without obtaining Bradley's written consent. Under the applicable rule of criminal procedure, Fed. R. Crim. P. 24(c), written consent is not required. The rule, as amended, gives the district court discretion, stating: "[t]he court may retain alternate jurors after the jury retires to deliberate If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew." Fed. R. Crim. P. 24(c)(3). Bradley is relying on case law that precedes the rule's amendment and is therefore superseded by the plain language of the new rule.

Bradley also contends, that if the substitution was appropriate, the district court nevertheless erred in giving the jury an "Allen Charge" before it began deliberating anew. The record reflects that the court modified its previous instruction to the jury in a manner that was acceptable to defense counsel. There was no objection and no abuse of discretion. See United States v. Nelson, 137 F.3d 1094, 1109 (9th Cir. 1998).

With respect to sentencing, Bradley contends that statements he made to a government witness were ambiguous and not threatening. Under our circuit's law,

statements that can be “reasonably construed” to be threats constitute obstruction of justice. United States v. Jackson, 974 F.2d 104, 106 (9th Cir. 1992).

The district court found that Bradley’s statement could reasonably be construed as a threat, and its finding was not clearly erroneous.

AFFIRMED.